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Document Title(s)
Interlocal Agreement between Adams County Park District No. 1 and the City of Othello Regarding the construction, operation and ownership of an aquatic center

Reference Number(s) of related documents

Additional Reference Numbers on page _____

Grantor(s) (Last, First and Middle Initial)

CITY OF OTHELLO
500 E. MAIN
OTHELLO, WA 99344

Additional Grantees on page _____

Grantee(s) (Last, First and Middle Initial)

Adams County Park District No. 1
% Alan Hanks
335 N. 3rd Avenue
Othello, WA. 99344

Additional Grantees on page _____

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

N/A

Additional Legal Description on page _____

Assessor's Property Tax Parcel/Account Number

N/A

Additional Parcel Numbers on page _____

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INTERLOCAL AGREEMENT BETWEEN ADAMS COUNTY
PARK DISTRICT NO. 1 AND THE CITY OF OTHELLO
REGARDING THE CONSTRUCTION, OPERATION AND
OWNERSHIP OF AN AQUATIC CENTER

1. **Preamble.** This Interlocal Agreement is made and entered into effective **February 17, 2006**, by and between Adams County Park and Recreation District No. 1, a municipal corporation of the State of Washington, herein known as "District," and the City of Othello, a municipal corporation of the State of Washington, herein known as "City."

2. **Recitals.**

2.1 The City operates a swimming pool which is near the end of its serviceable life and desires to have available to its citizens as a replacement aquatic center.

2.2 The District has the power to construct and operate recreational facilities, as defined by RCW 36.69.010, which include swimming pools and related facilities, either in its own capacity or by agreement with other governmental entities.

2.3 The City has the power to construct and operate recreational facilities including swimming pools and related facilities.

2.4 The City and District have the authority pursuant to RCW Chapter 39.34 and RCW 39.36.130 to enter into this Interlocal Agreement.

3. **Agreement.** In consideration of the mutual benefits and covenants described herein, the parties agree as follows:

3.1 **Purpose.** The purpose of this Agreement is to provide for the financing, construction and operation of an aquatic center to serve the residents of the District and the City. This is to be accomplished through District issued voter approval general obligation bonds to finance the construction of the aquatic center and related facilities. Owing to the District's lack of staff, the City would arrange for the bidding, construction and operation of the aquatic center and related facilities as defined in this Agreement.

3.2 **Financing.** The District agrees to place before its voters the proposition for the issuance of at least two million six hundred thousand dollars (\$2.6 million) in general obligation debt excess to the regular levy of the District for a period of up to twenty years. The District shall bear all costs of this election and bond counsel opinion.

3.2.1 In the event the bond election described above is unsuccessful, this Agreement shall terminate.

3.2.2 In the event the bond election described above is successful, then the parties agree



to perform as provided in this Agreement.

3.3 Design, Bid and Build. Owing to a lack of District staff and resources, the City will provide the staff and coordination to design, bid and construct the aquatic center and related facilities. All costs incurred by the City in the design, bidding and construction of the aquatic center and related facilities, other than staff time, shall be reimbursed to the City from the bid proceeds as costs of the aquatic center and related facilities.

3.3.1 The City agrees to provide staff and employ professional services to develop a design for an aquatic center and related facilities to be located near the current location of the existing City swimming pool. The District Board and the City Council shall appoint members to a five person committee to review and approve a design for the aquatic center which meets these criterion: It shall be an outdoor facility with a zero depth area, water play toys, swimming areas, concession stand facilities and other features deemed desirable and within the projected budget for the facility. Such design shall be approved within ninety (90) days to the effective date of this Agreement.

3.3.2 Once a design has been approved as provided for above, the City shall act as agent for the parties to cause bidding documents to be prepared and a bid for construction to be called for. The City shall employ engineers, architects or other appropriate professionals, comply with the laws related to the selection of such professionals, to accomplish this task.

3.3.3 Once bids have been received and reviewed by the engineers, architects or other appropriate professionals employed for such purpose, the bid shall be presented to the District Board and the City Council. Each body shall be required to approve the award of a bid to the lowest responsive and responsible bidder.

If the parties cannot agree, all bids shall be rejected and the project shall be rebid with such changes in the design as the committee defined above approves to attempt to produce a resultant bid which is within the budget and design desires of the parties.

3.3.4 Once both the District Board and the City Council approve the award of a bid to the lowest responsive and responsible bidder, the City shall cause appropriate contract documents to be prepared and executed. Those contract documents shall list the District as the owner of the project and the City as the Owner's agent for construction.

3.3.5 The City shall act through its staff and through employed engineers, architects or other appropriate professionals to cause construction of the aquatic center and related facilities to be accomplished in accordance with the plans and specifications placed for bidding. Change orders totaling up to ten percent (10%) of the total bond issue may be approved by the City Council so long as such change orders do not exceed the funds available to complete the project including the costs of engineers, architects or other appropriate professionals.



Change orders totaling in excess of ten percent (10%) of the total bond issue may only be approved by approving action of both the District Board and the City Council.

3.3.6 Once the construction of the aquatic center and related facilities is complete, the District Board and the City Council must both approve acceptance of the project as complete after consultation with the engineers, architects or other appropriate professionals employed to assist in such construction and approval of the same.

3.4 **License.** The City grants to the District a license to construct and have an aquatic center upon City property in the vicinity of the current city swimming pool for the beginning of construction through the term of this Agreement. The terms of such license are the terms of this Agreement.

3.5 **Operation.** The City shall operate the aquatic center and related facilities for the life of the bond issued for the construction of the aquatic center and related facilities.

3.5.1 The City shall, in its sole discretion, employ and train all staff. The City shall supervise and be responsible for all volunteers or community service workers employed in connection with the aquatic center and related facilities subject to the limitation of paragraph 3.6

3.5.2 The City shall cause all repairs to be made to the aquatic center and related facilities, including ordinary wear and tear. The City shall determine in its sole discretion what repairs are to be made and the method, manner and timing of such repairs. The City shall be responsible for any bidding or contracting required to accomplish such repairs.

The City shall, in its sole discretion, provide by use of its own forces or by employment of others for the maintenance and cleaning of the aquatic center and related facilities. All such costs shall be the responsibility of the City up to the limit set forth in paragraph 3.6

3.5.3 The rates and fees to be charged for the use of the aquatic center and related facilities shall be established by the City Council. The price of admission or other use fees shall be uniform among City residents and District residents. Admission or other use fees may be different for persons not residents of the City or the District.

All fees and charges collected by the City for use of the aquatic center and related facilities shall be the property of the City. All profits from the operation of concession and/or souvenir stands operated by the City or permitted to operate on the aquatic center and related facilities by the City shall be the property of the City.

3.6 Operation and Maintenance Contribution.

3.6.1 Beginning with 2007, the City will guarantee to pay up to one hundred thousand



dollars (\$100,000) annually toward the operation and maintenance of the aquatic center and related facilities during the term of this Agreement in those years where the revenues from the operation of the aquatic center and related facilities does not cover the costs of operation and maintenance. The City shall contribute to the operation and maintenance of the aquatic center and related facilities by paying the costs of operation and maintenance as they are incurred up to the limit of the City's contribution and after application of all revenues from the operation of the aquatic center and related facilities. All other costs of operation and maintenance of the aquatic center and related facilities during the term of this Agreement shall be the responsibility of the District.

3.6.2 Annually the proposed budget of the City for the operation and maintenance of the aquatic center and related facilities shall be provided to the District Board on or before the first of October to permit the District board to comment on the proposed budget and to permit the City Council to consider those proposals in the adoption of its budget.

3.6.3 Independent of the guarantee to contribute up to one hundred thousand dollars (\$100,000) annually toward the operation and maintenance of the aquatic center and related facilities during the term of this Agreement, the City shall pay to the District every year beginning with calendar year 2007, the sum of ten thousand dollars (\$10,000) to compensate the District for all incidental and administrative expenses of the District related to this Agreement.

3.7 **Transfer of Ownership.** At the conclusion of the term of this Agreement, the City, in consideration of the tasks performed by the City in the design, bidding, construction and operation of the aquatic center and related facilities, shall receive from the District title to the aquatic center and related facilities free of any and all encumbrance of debt.

4. **Term of Agreement.** This Agreement shall be for twenty years beginning on February 17, 2006 and ending on December 31, 2026. Neither party may terminate this Agreement prior to its expiration except for a material breach pursuant to the process provided for herein.
5. **Dispute Resolution.** Disputes that arise as to the operation of the aquatic center and related facilities to accomplish the purposes of this Agreement shall be submitted to the District Board and the City Council which shall attempt to resolve the dispute. In the event the District Board and the City Council shall be unable to resolve the dispute, the dispute shall be submitted to binding arbitration in accordance with RCW Chapter 7.40.
6. **Venue.** Venue for any dispute resolution under this Agreement, including the conducting of depositions, shall be in Adams County, Washington, unless another venue is agreed to by the parties.
7. **Claim of Breach.** Any claim of a material breach of this Agreement by either party shall be transmitted in writing to the other party and the other party shall be given thirty (30)



days to respond to the allegation. If the claim of breach remains after receipt of a response from the other party, the first party shall issue a written notice the response was unacceptable. The responding party shall then have ninety (90) days to cure any alleged material breach of this Agreement. If after the end of that ninety (90) day period the first party continues to allege a material breach of this Agreement exists, the parties may move to dispute resolution as provided herein.

8. **Notice.** Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to the Adams County Park and Recreation District No. 1, Chairman, Othello WA 99344 or to the City at the Office of the Mayor, 500 E Main, Othello WA 99344-1195, or at such other address as either party may designate to the other in writing from time to time. All notices to be given with respect to this Agreement shall be in writing. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of any notice in the manner prescribed for personal service of a summons or other legal process.
9. **Construction of Agreement.** In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.
10. **Hold Harmless.** The City shall hold the elected officials, agents, employees, servants, and representatives of the District harmless from any claim for injury or damage to persons or property arising from work performed under the terms of this Agreement by City employees, agents, attorneys, servants or representatives.
11. **Relationship of the Parties.** No agent, official, employee, servant, or representative of the City shall be deemed an officer, employee, agent, servant or representative of the District for any purpose not provided for in this Agreement. No agent, official, employee, servant or representative of the District shall be an officer, employee, agent, servant or representative of the City for any purpose. The City will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, or representatives. The District will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants or representatives.
12. **Entire Agreement.** This Agreement constitutes the entire agreement between the District and the City with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, with respect to such subject matter. Any alteration or amendment or modification of this Agreement shall be valid only if set forth in writing and signed by both parties hereto.
13. **Governing Law.** This Agreement shall be governed by laws of the State of Washington.
14. **Severability.** In the event any portion of this Agreement is determined to be void or



unenforceable, such provision shall be severable and will not affect the validity of the remaining portion of this Agreement.

- 15. **Time.** Time of is the essence with respect to this Agreement.
- 16. **Recording of Agreement.** This Agreement, prior to its entry into force, shall be filed with the Othello City Clerk and the Adams County Auditor.

<p>CITY OF OTHELLO</p> <p>By <u><i>Shannon McKay</i></u> Shannon McKay, Mayor</p>	<p>ADAMS COUNTY PARK AND RECREATION DISTRICT NO. 1</p> <p>By <u><i>William B. Bethman</i></u> Board Chair</p>
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